



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION**

**KEITH F. OSTROSKY, D.D.S.
DISMISSAL OF PROCEEDING**

On August 30, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration, issued an Order to Show Cause to Keith F. Ostrosky, D.D.S., of South St. Paul, Minnesota (hereinafter, Registrant¹). GX 2. The Show Cause Order proposed the revocation of Registrant's Certificate of Registration on the ground that he does not "have . . . state authority to handle controlled substances." *Id.* at 1.

As to the jurisdictional basis of the proceeding, the Show Cause Order alleged that Registrant is registered as a practitioner in schedules II through V under Certificate of Registration No. BO1259983, at the registered location of 351 15th Ave. N., South St. Paul, Minnesota. The Order further alleged that this Registration was due to expire on December 31, 2017. *Id.*

As to the substantive basis for the proceeding, the Show Cause Order alleged that "[o]n February 3, 2017, the Minnesota Board of Dentistry issued a Stipulation and Order," pursuant to which the Board accepted Registrant's voluntary surrender of his license to practice dentistry in the State of Minnesota. *Id.* The Show Cause Order thus alleged that Registrant is "currently without authority to practice dentistry or handle controlled substances in the State of Minnesota, the [S]tate in which [he is] registered with the DEA," and that as a consequence, his registration is subject to revocation. *Id.* at 1-2.

¹ While for reasons explained in this Decision, Registrant is now an Ex-Registrant, I refer to him as Registrant throughout this Decision.

The Show Cause Order notified Registrant of his right to request a hearing on the allegations or to submit a written statement of position while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* at 2. The Show Cause Order also notified Registrant of his right to submit a Corrective Action Plan pursuant to 21 U.S.C. § 824(c)(2)(C). *Id.* at 2-3.

On September 9, 2017, the Government accomplished service of the Show Cause Order by certified mail, as evidenced by the signed Return Receipt Card. GX 4. On November 7, 2017, the Government submitted a Request for Final Agency Action (RFAA). Therein, the Government represents that Registrant did not request a hearing and “has not otherwise corresponded or communicated with [the Agency] regarding the Order . . . including the filing of any written statement in lieu of a hearing.” RFAA, at 1-2. Based on the Government’s representation I find that more than 30 days have now passed since Registrant was served with the Show Cause Order and that he has not requested a hearing or filed a written statement of position; I further find that Registrant has not filed a Corrective Action Plan. Accordingly, I find that Registrant has waived his right to a hearing or to submit a written statement while waiving his right to a hearing; I also find that Registrant has waived his right to submit a Corrective Action Plan. 21 CFR 1301.43(d).

In the RFAA, the Government seeks a final order revoking Registrant’s registration. As support for the proposed sanction, the Government’s evidence includes a copy of the Stipulation and Order issued by the Minnesota Board on February 3, 2017, pursuant to which it accepted Registrant’s voluntary surrender of his dental license. GX 3.

The Government also submitted a Certification of Registration History, which was sworn to on October 30, 2017. GX 1. Therein, the Associate Chief of the Registration and Program

Support Section states that Registration No. BO1259983 “expires on December 31, 2017,” and that “Keith F. Ostrosky, D.D.S., has no other pending or valid DEA registration(s) in Minnesota.” *Id.* at 1-2.

Pursuant to 5 U.S.C. § 556(e), I take official notice of Registrant’s registration record with Agency. According to that record, Registration No. BO1259983 expired on December 31, 2017 and Registrant has not filed an application, whether timely or not, to renew his registration or for any other registration in the State of Minnesota.

DEA has long held that “if a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.” *Donald Brooks Reece II, M.D.*, 77 FR 35054, 35055 (2012) (quoting *Ronald J. Riegel*, 63 FR 67312, 67133 (1998)); *see also Thomas E. Mitchell*, 76 FR 20032, 20033 (2011). “Moreover, in the absence of an application (whether timely filed or not), there is nothing to act upon.” *Reece*, 77 FR at 35055. Accordingly, because Registrant has allowed his registration to expire and has not filed any application for registration in Minnesota, this case is now moot and will be dismissed.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. § 824(a), as well as 28 CFR 0.100(b), I hereby order that the Order to Show Cause issued to Keith F. Ostrosky, D.D.S., be, and it hereby is, dismissed. This Order is effective immediately.

Date: March 13, 2018

Robert W. Patterson
Acting Administrator

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